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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

COMPASS BANK)	Case Nos. EDCV 11-00871 VAP
	)	(DTBx) , EDCV 11-01201 VAP
Plaintiff,	)	(OPx)
)	
v.)	
	)	ORDER GRANTING COMPASS
CHRIS M. PETERSEN, et	)	BANK'S MOTION FOR PARTIAL
al.	)	SUMMARY JUDGMENT (11-0871,
	)	DOC. NO. 211) AND MOTION FOR
Defendants.	)	SUMMARY JUDGMENT (11-01201,
	)	DOC. NO. 106); AND DENYING
	)	DEFENDANTS' MOTIONS FOR
	)	SUMMARY JUDGMENT (11-0871,
	)	DOC. NOS. 147, 158)
CHRIS M. PETERSEN, et)	
al.)	
)	
Plaintiffs,)	
)	
v.)	
)	
ROUNDPOINT MORTGAGE)	
SERVICING CORP., et al.)	
)	
Defendants.))	

Before the Court is one motion for summary judgment filed by Defendants Compass Bank and Roundpoint Mortgage Servicing Corporation ("Roundpoint") against Plaintiffs Christopher and Carolina Petersen (case number 11-01201), and three motions for summary judgment in Compass Bank's

1 counter-lawsuit (case number 11-00871), one filed by
2 Plaintiff Compass Bank; one filed by Defendants
3 Christopher Petersen, Carolina Petersen, and CP Financial
4 and CP Realty, Inc. ("CP") ("Petersen Parties,"
5 collectively), and one filed by Defendant Strunzo
6 Development Corporation ("Strunzo").

8 I. BACKGROUND

9 A. Procedural History

10 On February 17, 2011, Christopher and Carolina
11 Petersen filed a Complaint in the San Bernardino County,
12 California, Superior Court against Compass Bank and
13 Roundpoint, a loan servicer, to prevent a foreclosure
14 sale of their property located at 27311 Peninsula Drive,
15 Lake Arrowhead, California 92352 ("Property"). (See Not.
16 of Removal, Ex A (Case No. 11-01201, Doc. No. 1.)
17 Compass Bank responded with a lawsuit filed in this Court
18 on June 3, 2011, against the Petersens, CP, and Strunzo.
19 (Complaint (Case No. 11-00871, Doc. No. 1).)

20
21 Having postponed foreclosure on the Property, the
22 Petersens on March 23, 2012, filed their presently
23 operative complaint against Compass Bank and Roundpoint,
24 alleging claims for declaratory judgment, accounting,
25 unjust enrichment, and equitable estoppel. (Second
26 Amended Complaint ("SAC")(Case No. 11-01201, Doc. No. 47-
27 1).)

1 On September 21, 2011, Compass Bank filed its
2 presently operative complaint against the Petersen
3 Parties and Strunzo, alleging the following claims on
4 which Compass Bank now moves for summary judgment:

- 5 1. Cancellation of instruments (against all
6 Defendants);
 - 7 2. Setting aside substitution of trustee and full
8 reconveyance (against all Defendants);
 - 9 3. Declaratory relief (against all Defendants);
 - 10 4. Quiet title (against all Defendants);
 - 11 5. Fraud (against Petersen Parties); and
 - 12 6. Slander of title (against Petersen Parties);
- 13 (First Amended Complaint ("FAC") (Case No. 11-00871, Doc.
14 No. 6).)¹

15
16 The Court denied Strunzo's motion to dismiss Compass
17 Bank's complaint on November 9, 2011 (Case No. 11-00871,
18 Doc. No. 19); and, in the related action, granted in part
19 and denied in part Compass Bank's motion to dismiss the
20 Petersens' complaint on May 7, 2012. (Case No. 11-01201,
21 Doc. No. 57.)

22
23
24
25 ¹ The FAC sets forth the following additional claims
26 not included in Compass Bank's Motion for Partial Summary
27 Judgment: judicial foreclosure, unjust enrichment, suit
28 on the note, equitable lien, equitable subrogation, and
breach of contract.

1 In June and July 2012, the parties filed multiple
2 motions for summary judgment that have been mooted or
3 deemed withdrawn because of procedural or technical
4 deficiencies. (See June 26, 2012, Minute Order (11-
5 00871, Doc. No. 143); July 19 Minute Order (11-00871,
6 Doc. No. 211.) The following are the final documents
7 filed in both actions presently before the Court:

8 Case No. 11-00871

- 9 1. Plaintiff Compass Bank's Motion for Partial Summary
10 Judgment (Doc. No. 211)
- 11 a. Defendants Petersen Parties' Opposition (Doc.
12 No. 214)
- 13 b. Defendant Strunzo's Opposition (Doc. No. 195)
- 14 c. Plaintiff Compass Bank's Reply (Doc. No. 220)
- 15 2. Defendant Strunzo's Motion for Summary Judgment (Doc.
16 No. 147)
- 17 a. Plaintiff Compass Bank's Opposition (Doc. No.
18 171)
- 19 b. Defendant Strunzo's Reply (Doc. Nos. 194, 196)²
- 20 3. Defendants Petersen Parties' Motion for Summary
21 Judgment (Doc. No. 158)
- 22
- 23

24 ² Strunzo filed the same Reply at docket numbers 194
25 and 196, stating on the docket that they are both related
26 to summary judgment motions filed by Strunzo. The Reply
27 at docket number 196 is correctly labeled and is thus
28 relied on by the Court; the Reply at docket number 194 is
misabeled as it relates to the Petersen Parties' motion
(Doc. No. 158), not Strunzo's (Doc. No. 147), and thus is
not relied on by the Court.

a. Plaintiff Compass Bank's Opposition (Doc. No. 183)

b. No Reply filed

Case No. 11-01201

4. Defendant Compass Bank's Motion for Summary Judgment (Doc. No. 106)

a. Plaintiffs Petersens' Opposition (Doc. No. 108)

b. Defendant Compass Bank's Reply (Doc. No. 115)

II. FACTS

A. Uncontroverted Facts³

³ Many of the uncontroverted facts here are derived from Compass Bank's Requests for Admissions propounded to the Petersen Parties and served on May 8, 2012. (See Watson Decl., Exs. A-C (Case No. 11-00871, Doc. No. 168.)) The Petersen Parties failed to respond to these requests within 30 days (by June 7, 2012), as required by Federal Rule of Civil Procedure 36(a)(3). Compass Bank notified the Petersen Parties on June 22, 2012, that the propounded admissions were deemed admitted. (See id., Ex. D.) Unanswered requests for admission are deemed admitted by Rule 36(a)(3) and "may be relied on as the basis for granting summary judgment." Conlon v. United States, 474 F.3d 616, 621 (9th Cir. 2007). The Court finds such reliance appropriate here, except to the extent that the Requests for Admissions are not binding as to facts involving Defendant Strunzo. Accord Riberglass, Inc. v. Techni-Glass Indus., Inc., 811 F.2d 565, 566 (11th Cir. 1987). The Court does, however, rely on the Petersen Parties' admissions regarding events to which Strunzo was not a party or which preceded Strunzo's involvement in this matter.

In addition to the admitted facts described herein, the Petersen Parties also admit to the "genuineness" of the copies of the original HTFC Note, the HTFC Deed of Trust, the allonge, and the loan modification agreement attached to the Watson Declaration as exhibits A-C(A), A-C(B), A-C(C), and A-C(D), respectively. (See Watson Decl., Exs.

(continued...)

1 The following material facts are supported adequately
2 by admissible evidence and are uncontroverted.⁴ They are
3 "admitted to exist without controversy" for the purposes
4 of these motions. See L.R. 56-3 (facts not "controverted
5 by declaration or other written evidence" are assumed to
6 exist without controversy); Fed. R. Civ. P. 56(e)(2)
7 (stating that where a party fails to address another
8 party's assertion of fact properly, the court may
9 "consider the fact undisputed for purposes of the
10 motion").

11
12 In 2005, the Petersens purchased the Property via
13 grant deed. (SAC ¶ 9.) In October 2007, the Petersens
14 obtained a refinance loan in the amount of \$1,760,200.00
15 at a 9.375% interest rate ("Note" or "HTFC Note") secured
16 by a Deed of Trust against the Property (collectively,
17 the "Subject Loan"). Christopher Petersen met with the
18 owner of the New York-based HTFC Corporation about
19 obtaining a loan, but, because HTFC was not licensed to
20 lend in California, HTFC table funded⁵ the \$1.76 million

21
22 ³(...continued)
23 A-C at 6-7.)

24 ⁴ To the extent any facts submitted by the parties
25 are not mentioned, the Court has not relied on them in
26 reaching its decision. Additionally, as the Court does
27 not rely on evidence challenged in either parties'
28 Objections to Evidence, the Court does not rule on those
objections.

⁵ "Table funding occurs when a transaction is
(continued...)

1 loan to Chris Petersen's company, CP. (Wider Decl. (Doc.
 2 No. 189), ¶¶ 1-5; SAC ¶ 12). Christopher Petersen is
 3 President and Chairman of CP, a mortgage and real estate
 4 company. (Decl. of Christopher Petersen, Vol. I, 18:7-
 5 19:23.) He and his wife, Carolina Petersen, are the only
 6 two CP shareholders and employees. (Id. at 18:14-17,
 7 22:16-20.)

8
 9 CP, named as "Lender," then loaned the HTFC funds to
 10 the Petersens as "Borrowers." (SUF ¶ 1; Christopher
 11 Petersen Decl. ¶ 6; SAC ¶ 12; Requests for Admissions
 12 ("RFA")⁶ ¶ 1.) Mortgage Electronic Systems, Inc.
 13 ("MERS") was nominated as the beneficiary under the Deed
 14 of Trust. (SUF ¶ 2; Compass Bank Request for Judicial
 15 Notice ("Compass Bank RJN" (Doc. No. 169)), Ex. 6.)

16
 17 On October 30, 2007, CP transferred the Subject Loan
 18 via an allonge executed by CP employee Andrea Carter to
 19 HTFC, as authorized by the Petersens. (RFA ¶¶ 3-6.) As
 20 of that transfer on October 30, 2007, CP has had no

21
 22 ⁵(...continued)
 23 consummated with the debt obligation initially payable by
 24 its terms to one person, but another person provides the
 25 funds for the transaction at consummation and receives an
 immediate assignment of the note, loan contract, or other
 evidence of the debt obligation." Regulation Z
 Commentary, 12 CFR Part 226 Supp. I, Comm. 36(a)-1.

26
 27 ⁶ Unless otherwise noted, "RFA" and the citation
 28 pincites refer to all the requests for admissions
 propounded to Christopher Petersen, Carolina Petersen,
 and CP.

1 beneficial interest in the Subject Loan and none of the
2 Petersen Parties have possessed the original HTFC note.
3 (RFA ¶¶ 7-9.)

4
5 The Petersens sent their payments on the Subject
6 Loan along with the original HTFC Note to HTFC
7 immediately after the loan funded. (SUF ¶ 13; RFA ¶¶ 2-
8 3.) When the Subject Loan funded and transferred to
9 HTFC, the Subject Loan was purchased by Guaranty Bank via
10 a Mortgage Loan Purchase Agreement. (SUF ¶ 9; Wider
11 Decl. ¶ 6, Ex. B.). After the purchase, the Petersens
12 made payments to Guaranty Bank on the Subject Loan,
13 attempted a short sale to Guaranty Bank, and executed a
14 Loan Modification Agreement with Guaranty Bank on June
15 18, 2009, though Guaranty Bank never implemented it.⁷

16
17
18 ⁷ The Petersen Parties argue that the Loan
19 Modification Agreement with Guaranty Bank is inadmissible
20 evidence under sections 1152 and 1154 of the California
21 Evidence Code, which govern "offers to compromise" and
22 "offer to discount a claim," respectively. (See Petersen
23 Parties Opp'n at 6-7.) The California Evidence Code does
24 not apply in this Court. Furthermore, the Court finds
25 the Loan Modification Agreement is not inadmissible under
26 the Federal Rules of Evidence because any alleged
27 settlement communications made by the Petersen Parties
28 are not being introduced by Compass Bank to prove that
the Petersen Parties are liable for the same claims that
were the subject of the settlement communications. See
Monex Deposit Co. v. Gilliam, 680 F. Supp. 2d 1148, 1155
(C.D. Cal. 2010). That is, the evidence is not offered
to prove that the Petersens were in default on their
debt; it is offered to prove that Guaranty Bank was the
beneficial owner of the Subject Loan at that time. In
addition to making the evidence admissible, the fact that
the evidence does not show a dispute as to ownership of
the Subject Loan is precisely what makes it probative to
this matter in the first place.

1 (SUF ¶¶ 9, 18-19; RFA ¶ 10; RFA of Genuiness of Documents
2 ¶ 4; SAC ¶ 18; Oswald Decl. ¶ 6.) The Petersens have
3 never made payments on the Subject Loan to CP. (RFA ¶
4 11.)

5
6 At some point thereafter, Guaranty Bank closed and
7 the FDIC was named as its receiver. On August 21, 2009,
8 Compass Bank acquired the Subject Loan, including the
9 original HTFC Note and allonge, from the FDIC. (SUF ¶¶
10 10-11 ; Oswald Decl. ¶¶ 3-5, Exs. 1-3.) Also included in
11 Compass Bank's loan file is the Loan Modification
12 Agreement executed by the Petersens and identifying
13 Guaranty Bank as "Lender" and MERS as "mortgagee."
14 (Oswald Decl. ¶ 6, Ex. 4; RFA of Genuiness of Documents ¶
15 4.)

16
17 RoundPoint, the present loan servicer for the
18 Subject Loan, maintains records indicating that, since
19 April 1, 2008, the Petersens have been in default on the
20 Subject Loan and have an unpaid principal balance of
21 \$1,778,009.00. (Kernicky Decl. ¶ 3, Ex. 1.)

22
23 On January 30, 2009, MERS substituted ReconTrust
24 Company, N.A. ("ReconTrust") as the trustee on the Deed
25 of Trust securing the Petersens' obligations on the
26 Subject Loan. (SUF ¶ 25; Valerio Decl., Ex. 3; Compass
27 Bank RJN, Ex. 9.) A Trustee's Sale of the Property was
28

1 scheduled for October 27, 2009. (SUF ¶ 27.) One day
2 before the sale was to occur, the Petersens executed a
3 grant deed in favor of Carolina Petersen's mother, who
4 immediately filed a petition for bankruptcy protection,
5 thus preventing the foreclosure sale. (Id. ¶¶ 27-31.)
6 These events led Compass Bank to issue in error an IRS
7 1099C form in Guaranty Bank's name to the Petersens
8 stating that \$1,325,759.36 of the Petersens' debt had
9 been canceled in light of the foreclosure sale, which had
10 not actually taken place. (Id. ¶¶ 32-33; SAC ¶ 23.) The
11 amount of debt purportedly canceled by the 1099C form was
12 less than the total amount the Petersens owed on the
13 Subject Loan. (RFA ¶ 16.) The Petersens accepted the
14 1099C form and did not dispute Guaranty Bank's authority
15 to cancel debt on the Subject Loan. (SUF ¶¶ 35, 39.)
16

17 Based on this 1099C form from Compass Bank/Guaranty
18 Bank, the Petersens and CP on May 18, 2010, caused a full
19 Reconveyance and Substitution of Trustee ("Reconveyance")
20 in order to obtain further loan proceeds secured by the
21 Property. (RFA ¶¶ 12-17; Compass Bank RJN, Ex. 7.) The
22 Petersen Parties caused the Reconveyance to be recorded
23 despite their lack of authority to do so, knowing the
24 Subject Loan had not been paid off, and knowing that CP
25 was not the foreclosure trustee and had not had any
26 beneficial interest in the Subject Loan since October 30,
27 2007. (RFA ¶¶ 7, 12-17; Compass Bank RJN, Ex. 7.) The
28

1 Reconveyance is signed by Christopher Petersen in the
2 capacity of President of CP. (See Compass Bank RJN, Ex.
3 7 at 1.)

4
5 On February 2, 2009, ReconTrust recorded a Notice of
6 Default stating that the Petersens were \$110,877.15 in
7 arrears on the Subject Loan; the Petersens received this
8 Notice of Default sometime in February or March of 2009.
9 (SUF ¶ 40; Compass Bank RJN, Ex. 8; Christopher Petersen
10 Dep. at 408, ¶¶ 13-24 (attached to McKenna Decl., Ex.
11 D).) ReconTrust then recorded a Notice of Trustee's Sale
12 on May 12, 2009. (SUF ¶ 41.)

13
14 On January 7, 2011, the Petersens executed a new
15 Deed of Trust on the Property to secure a loan from
16 Strunzo in the amount of \$227,500.00. (Compass Bank RJN,
17 Ex. 16.)

18 19 **II. LEGAL STANDARD**

20 A court shall grant a motion for summary judgment
21 when there is no genuine issue as to any material fact
22 and the moving party is entitled to judgment as a matter
23 of law. Fed. R. Civ. P. 56(a); Anderson v. Liberty
24 Lobby, Inc., 477 U.S. 242, 247-48 (1986). The moving
25 party must show that "under the governing law, there can
26 be but one reasonable conclusion as to the verdict."
27 Anderson, 477 U.S. at 250.

1
2 Generally, the burden is on the moving party to
3 demonstrate that it is entitled to summary judgment. See
4 Margolis v. Ryan, 140 F.3d 850, 852 (9th Cir. 1998)
5 (citing Anderson, 477 U.S. at 256-57); Retail Clerks
6 Union Local 648 v. Hub Pharmacy, Inc., 707 F.2d 1030,
7 1033 (9th Cir. 1983). The moving party bears the initial
8 burden of identifying the elements of the claim or
9 defense and evidence that it believes demonstrates the
10 absence of an issue of material fact. Celotex Corp. v.
11 Catrett, 477 U.S. 317, 323 (1986). Because summary
12 judgment is a "drastic device" that cuts off a party's
13 right to present its case to a jury, the moving party
14 bears a "heavy burden" of demonstrating the absence of
15 any genuine issue of material fact. See Avalos v. Baca,
16 No. 05-CV-07602-DDP, 2006 WL 2294878 (C.D. Cal. Aug. 7,
17 2006) (quoting Nationwide Life Ins. Co. v. Bankers
18 Leasing Ass'n, Inc., 182 F.3d 157, 160 (2d Cir. 1999)).

19
20 Where the non-moving party has the burden at trial,
21 however, the moving party need not produce evidence
22 negating or disproving every essential element of the
23 non-moving party's case. Celotex, 477 U.S. at 325.
24 Instead, the moving party's burden is met by pointing out
25 that there is an absence of evidence supporting the non-
26 moving party's case. Id.; Horphag Research Ltd. v.
27 Garcia, 475 F.3d 1029, 1035 (9th Cir. 2007). "[A]

1 summary judgment motion may properly be made in reliance
2 solely on the 'pleadings, depositions, answers to
3 interrogatories, and admissions on file.'" Celotex, 477
4 U.S. at 324 (quoting Fed. R. Civ. P. 56(c)).

5
6 The burden then shifts to the non-moving party to
7 show that there is a genuine issue of material fact that
8 must be resolved at trial. Fed. R. Civ. P. 56(c);
9 Celotex, 477 U.S. at 324; Anderson, 477 U.S. at 256. The
10 non-moving party must make an affirmative showing on all
11 matters placed in issue by the motion as to which it has
12 the burden of proof at trial. Celotex, 477 U.S. at 322;
13 Anderson, 477 U.S. at 252. See also William W.
14 Schwarzer, A. Wallace Tashima & James M. Wagstaffe,
15 Federal Civil Procedure Before Trial § 14:144. A genuine
16 issue of material fact will exist "if the evidence is
17 such that a reasonable jury could return a verdict for
18 the non-moving party." Anderson, 477 U.S. at 248.

19
20 In ruling on a motion for summary judgment, a court
21 construes the evidence in the light most favorable to the
22 non-moving party. Scott v. Harris, 550 U.S. 372, 378,
23 380 (2007); Barlow v. Ground, 943 F.2d 1132, 1135 (9th
24 Cir. 1991); T.W. Elec. Serv. Inc. v. Pac. Elec.
25 Contractors Ass'n, 809 F.2d 626, 630-31 (9th Cir. 1987).

III. DISCUSSION

The Court first considers Compass Bank's Motion for Partial Summary Judgment in case number 11-00871, as the Court's findings regarding that Motion may affect or moot resolution of the three other summary judgment motions.

A. Case Number 11-00871: Plaintiff Compass Bank's Motion for Partial Summary Judgment

1. Cancellation of Instruments, Setting Aside Reconveyance, Declaratory Relief, and Quiet Title Against the Petersen Parties and Strunzo

The first four claims in Compass Bank's FAC hinge on questions of who had the authority at specific times to take certain actions. The matter becomes increasingly complicated over time, with different parties making new promises and effecting new transactions under conflicting assumptions about their authority relative to the Subject Loan. The Court determines here at what point, if any, the parties' narratives diverge due to a disjuncture between their interpretation of the law, rather than a genuine dispute between their assertions of the facts.

The relevant facts are quite simple as to Compass Bank's first four claims alleged in its FAC: As of October 30, 2007, the Subject Loan, i.e., the original HTFC note and the original Deed of Trust against the Property, had transferred from CP to HTFC, as per the parties' original agreement. As of that transfer, CP has not had a beneficial interest in the Subject Loan and

1 neither the Petersens nor CP have possessed the original
2 HTFC note. The copies of the original HTFC note, Deed of
3 Trust, and allonge submitted as evidence by Compass Bank
4 are genuine.

5
6 Compass Bank first requests the Court order
7 cancellation of the Reconveyance of the Subject Loan as
8 of May 18, 2010, the date it was recorded in the San
9 Bernardino County Official Records. (See FAC ¶¶ 31-39;
10 Compass Bank RJN, Ex. 7.)

11
12 A deed of trust is a lien on real property. Monterey
13 S.P. Partnership v. W.L. Bangham, Inc., 49 Cal.3d 454,
14 460 (1989). Reconveyance of a deed of trust extinguishes
15 the lien and transfers the title and authority from the
16 prior trustee named in the deed of trust to the new
17 trustee. See Cal. Civ. Code §§ 2939, 2941(b)(1); First
18 Fidelity Thrift & Loan Ass'n v. Alliance Bank, 60 Cal.
19 App. 4th 1433, 1441 (1998); Dimock v. Emerald Properties,
20 81 Cal. App. 4th 868, 871 (2000).

21
22 The Court may order cancellation of an invalid
23 written instrument that is void or voidable. Cal. Civ.
24 Code §§ 3412, et seq. "Where the beneficiary of a deed
25 of trust recorded a document that substituted a new
26 trustee for the former trustee, the new trustee ha[s]
27 sole power to convey the property, and therefore the
28

1 former trustee's conveyance of the property to a new
2 buyer after a foreclosure sale [is] void. Dimock, 81
3 Cal. App. at 868.

4
5 CP did not have authority to cause the Reconveyance
6 and substitution of trustee to be issued and recorded,
7 and CP and the Petersens knew that the Subject Loan had
8 not been paid off, as would be required to cause a
9 Reconveyance to issue and extinguish the lien. See
10 Alliance Mortgage Co. v. Rothwell, 10 Cal. 4th 1226, 1235
11 (1995). CP had authorized MERS to act as nominee for the
12 beneficiary under the Subject Loan (RFA-CP ¶ 16), and CP
13 had no beneficial interest in the Subject Loan as of
14 October 30, 2007. Thus, because none of the Petersen
15 Parties had the authority to issue the Reconveyance, the
16 Court finds the Reconveyance void and cancels the May 18,
17 2010, Reconveyance as of that date of recordation.

18
19 Cancellation is proper here despite the post-
20 Reconveyance Strunzo loan because of the Court's finding
21 that the Reconveyance is void and not just voidable.
22 "Under California law, a bona fide purchaser for value
23 takes title free and clear of an improperly reconveyed
24 deed of trust, so long as the reconveyance is voidable
25 and not void. . . . If the reconveyance was void, it
26 would have no effect even against a subsequent bona fide
27
28

1 purchaser." Schiavon v. Arnaudo Bros., 84 Cal. App. 4th
2 374, 376, 378 (2000).

3
4 Based on the facts set forth above, the Reconveyance
5 here is equivalent in legal status to a forged
6 reconveyance. In Wutzke v. Bill Reid Painting Serv.,
7 Inc, 151 Cal. App. 3d 36 (1984), a party forged a
8 reconveyance to clear the encumbered property of debt and
9 "then borrowed money from a third party, who knew nothing
10 of the fraud, and executed a promissory note secured by a
11 new first deed of trust on the property." Schiavon, 84
12 Cal. App. at 379 (citing Wutzke, 151 Cal. App.).
13 "Although the law protects innocent purchasers and
14 encumbrancers, 'that protection extends only to those who
15 obtained good legal title. . . . [A] forged document is
16 void *ab initio* and constitutes a nullity; as such it
17 cannot provide the basis for a superior title as against
18 the original grantor.'" Id. (quoting Wutzke, 151 Cal.
19 App. at 43).

20
21 Here, the unauthorized Reconveyance was invalid and
22 the legal equivalent of the forged document in Wutzke.
23 Even if the Court did find the Reconveyance voidable
24 instead of void, though, the uncontroverted evidence
25 demonstrates that Strunzo had actual notice that the
26 Reconveyance was unauthorized. Cf. First Fid. Thrift &
27 Loan Ass'n v. Alliance Bank, 60 Cal. App. 4th 1433, 1441
28

1 (1998) (emphasis in original) ("If a trustee executes an
2 unauthorized reconveyance and the trustor subsequently
3 conveys the property, a grantee *who does not have notice*
4 of the trustee's lack of authority receives title free
5 and clear of the lien."). The uncontroverted evidence
6 shows that Strunzo had "knowledge of circumstances which,
7 upon reasonable inquiry, would lead to" the fact that the
8 Reconveyance was unauthorized. *Id.* at 1443. Christopher
9 Petersen, listed as "borrower" on the Subject Loan,
10 signed the Reconveyance as President of CP, the purported
11 "lender" being substituted as the "trustee." That fact
12 combined with the clear evidence of the Reconveyance's
13 invalidity that would have been discovered upon a
14 reasonable inquiry counters Strunzo's claim to protection
15 as a bona fide encumbrancer. Thus, on the undisputed
16 facts, Strunzo could not prevail even if the Court found
17 the Reconveyance voidable and not void *ab initio*.

18
19 For the foregoing reasons, the Court grants summary
20 judgment in favor of Plaintiff Compass Bank on its claim
21 for cancellation of the Reconveyance as void *ab initio*,
22 as well as on its claim for setting aside the recordation
23 of the Reconveyance as of the date of the recordation.

24 (FAC ¶¶ 40-44.)

25
26 Compass Bank also seeks a declaration "that the
27 Reconveyance is void and of no force or effect
28

1 whatsoever, and Defendants' interest in the Property, if
2 any, are subordinate to Plaintiff's beneficial interest
3 in the HTFC [Deed of Trust]." (FAC ¶ 50.) Where subject
4 matter jurisdiction is solely based on diversity, federal
5 law determines whether there is a controversy before the
6 Court within the purview of the Declaratory Judgment Act,
7 28 U.S.C. § 2201, and state law creates and determines
8 the substantive rights and duties that may vindicated
9 through declaratory relief. See St. Paul Fire and Marine
10 Ins. Co. v. Weiner, 606 F.2d 864, 867 (9th Cir. 1979);
11 Hunt v. State Farm Mut. Auto. Ins. Co., 655 F. Supp. 284,
12 286 (D. Nev. 1987); MacMillan-Bloedel, Inc. v. Firemen's
13 Ins. Co. of Newark, N.J., 558 F. Supp. 596, 598 (S.D.
14 Ala. 1983). The Court finds the controversy at issue
15 justiciable under the Declaratory Judgment Act and finds
16 Compass Bank's claim for declaratory relief warranted
17 under Cal. Civ. Code § 1060.⁸ Thus, the Court grants
18 summary judgment in favor of Compass Bank on its claim
19 for declaratory judgment.

22 ⁸ Cal. Civ. Code § 1060 states,
23 Any person interested under a written instrument
24 . . . or who desires a declaration of his or her
25 rights or duties with respect to another, or in
26 respect to . . . property, . . . may, in cases of
27 actual controversy relating to the legal rights
28 and duties of the respective parties, bring an
original action . . . for a declaration of his or
her rights and duties in the premises, including
a determination of any question of construction or
validity arising under the instrument or contract.

1 Compass Bank's final claim for equitable relief
2 against the Petersen Parties and Strunzo in this Motion
3 is for quiet title. Upon invalidating the Reconveyance
4 and its recordation as void, the Court resolves the
5 parties' adverse claims to beneficial interest in the
6 Subject Loan by granting summary judgment on Compass
7 Bank's quiet title claim in favor of Compass Bank and
8 against the Petersen Parties and Strunzo. (FAC ¶¶ 55-
9 57.)

11 **2. Fraud Against the Petersen Parties**

12 Plaintiff Compass Bank claims that, as a result of
13 the Petersen Parties' "fraudulent conduct, Plaintiff has
14 suffered damages via the inability to foreclose on the
15 Property and the potential loss of the Property." (FAC ¶
16 61.)

17 For the Court to grant summary judgment in favor of
18 Compass Bank on its fraud claim, Compass Bank must prove
19 that the Petersen Parties (1) falsely represented or
20 concealed a material fact; (2) knew their representation
21 was false; (3) made the representation with intent to
22 induce Compass Bank to act on it; (4) did induce Compass
23 Bank to act on it; and (5) inflicted damages on Compass
24 Bank due to Compass Bank's reliance upon the Petersen
25 Parties' false representations. See Alliance Mortgage
26 Co., 10 Cal. 4th at 1239; Molko v. Holy Spirit Ass'n, 46
27 Cal. 3d 1092, 1108 (1988).

1
2 The Petersen Parties falsely represented that they
3 had authority to cause the full Reconveyance, knowing at
4 the time that the Subject Loan had not been paid. In the
5 several years before causing the Reconveyance to issue,
6 the Petersen Parties had transferred the original note to
7 HTFC, made payments on the Subject Loan to HTFC and
8 Guaranty Bank, attempted a short sale to Guaranty Bank,
9 executed a Loan Modification Agreement with Guaranty
10 Bank, and accepted the mistakenly sent 1099C form from
11 Guaranty Bank without disputing Guaranty Bank's authority
12 to cancel the Petersen's debt on the Subject Loan. These
13 actions and omissions between October 30, 2007, and May
14 18, 2010 (the date of the Reconveyance), lulled Compass
15 Bank into believing that their claim to and security in
16 the Subject Loan was not disputed. This allowed the
17 Petersens to issue the Reconveyance improperly, create
18 the appearance of having cleared title to the Property,
19 and perpetuate their scheme of, in their own words, using
20 the Property "as a virtual ATM machine." (Petersen
21 Parties Opp'n at 2.) As a result of this fraudulent
22 misconduct, Compass Bank has been unable to foreclose on
23 the Property while the Petersens have exploited the
24 invalid Reconveyance to borrow more money against the
25 Property and continue their enjoyment of the Property.
26 Based on the foregoing facts, Compass Bank has proved the
27 fraud elements of (1) false representation; (2) knowledge
28

1 of falsity; (3) intent to defraud or induce reliance; (4)
2 justifiable reliance; and (5) resulting damage as Compass
3 Bank alleges against the Petersen Parties in its FAC.
4 See Molko, 46 Cal. 3d at 1108.

5
6 Compass Bank's request for punitive damages is also
7 warranted. "Punitive damages are recoverable in those
8 fraud actions involving intentional, but not negligent,
9 misrepresentations." Alliance Mortgage Co, 10 Cal. 4th
10 at 1241. Further, California courts have found punitive
11 damages to be particularly justified in cases of
12 "[f]raudulent misrepresentations by real estate brokers."
13 Wyatt v. Union Mortgage Co., 24 Cal. 3d 773, 790 (1979).

14
15 In this case, in addition to the clear evidence of
16 the Petersens' intent to deceive and to, as they admit
17 (RFA ¶¶ 13, 20), use that deception to obtain further
18 loan proceeds, it is also evident that the Petersens are
19 sophisticated parties who were well aware of their
20 fraudulent actions at all times. Christopher Petersen,
21 according to the Petersens, is a "gullible youngster."
22 (Petersen Parties Opp'n at 1.) Christopher Petersen,
23 according to the uncontroverted evidence, is a loan
24 broker and the President and Chairman of CP, a company
25 that originates mortgage loans for commercial and
26 residential real estate, buys and sells properties, and
27 offers loss mitigation services by negotiating with
28

1 clients' lenders for short sale or loan modification.
2 (Declaration of Christopher Petersen, Vol. I, 18:7-
3 19:23.) He and his wife, Carolina Petersen, are the only
4 two shareholders and employees of CP. (Id. at 18:14-17,
5 22:16-20.)

6
7 The uncontroverted facts show that the Petersens had
8 the intent to defraud from the time they arranged the
9 dubious transaction by which their company, CP, "lended"
10 them over \$1.75 million. Therefore, Compass Bank has met
11 its burden proving it is entitled to summary judgment on
12 its fraud claim against the Petersen Parties and is
13 entitled to compensatory and punitive damages.

14 15 **3. Slander of Title Against the Petersen Parties**

16 "Slander of title occurs when there is an
17 unprivileged publication of a false statement which
18 disparages title to property and causes pecuniary loss."
19 Stalberg v. W. Title Ins. Co., 27 Cal. App. 4th 925, 929
20 (1994).

21
22 In Seeley v. Seymour, 190 Cal. App. 3d 844, 859,
23 (1987), the court stated "that it is the reasonably
24 foreseeable effect upon prospective purchasers or
25 lessees, not the strictly legal effect on title of a
26 recorded instrument, which is the gravam[e]n of a cause
27 of action for disparagement of title under California
28

1 law." In that case, the court found in favor of the
2 plaintiff where the defendant recorded a legally invalid
3 "Memorandum of Agreement" to lease real property because
4 the memorandum "was reasonably understood by third
5 parties as an announcement that the purported lessee was
6 claiming a 60-year leasehold interest in the premises,
7 and it was so read to the property owner's damage." Id.

8
9 Here, the damage caused by the Petersen Parties'
10 slander of title consists of the loss of Compass Bank's
11 ability to initiate a foreclosure sale and the cost to
12 Compass Bank of clearing title on the Property. See
13 Glass v. Gulf Oil Corp., 12 Cal. App. 3d 412, 424 (1970)
14 (stating that "impairment of vendibility and cost of
15 clearing title" constitute pecuniary damages in a slander
16 of title action). "Accordingly, it is well-established
17 that attorney fees and litigation costs are recoverable
18 as pecuniary damages in slander of title causes of action
19 when . . . litigation is necessary to remove the doubt
20 cast upon the vendibility or value of plaintiff's
21 property." Sumner Hill Homeowners' Ass'n, Inc. v. Rio
22 Mesa Holdings, LLC, 205 Cal. App. 4th 999, 1030 (2012).
23 The uncontroverted facts here demonstrate that the
24 Petersen Parties fraudulently recorded an instrument to
25 cloud Compass Bank's title and cause the loss of Compass
26 Bank's security on the Subject Loan. Thus, the Court

1 grants summary judgment in favor of Compass Bank on its
2 slander of title claim.

3
4 **4. Defendants' Affirmative Defenses**

5 Defendants put forth several affirmative defenses
6 that are either factually untenable⁹ or legally
7 irrelevant¹⁰ and are thus disregarded here. Defendant
8 Strunzo, though, also puts forth sound equitable defenses
9 that do warrant the Court's consideration. Namely,
10 Strunzo argues that Compass Bank is barred from equitable
11 relief on its first four FAC claims on account of the
12 equitable doctrines of unclean hands and waiver. (Strunzo
13 Opp'n at 15.)

14
15 An unclean hands defense might carry significant
16 weight were this action initiated by HTFC, which, knowing
17 it was unlicensed to lend in California and thus could
18 not do so legally, colluded with Christopher Petersen to
19 hatch the questionable scheme that allowed the Petersens
20 to lend \$1.76 million to themselves. Nevertheless, since
21 the transaction between HTFC and the Petersen Parties,
22

23 ⁹ E.g., the Petersen Parties argue that Compass Bank
24 cannot enforce the HTFC Note because it is not the
25 rightful holder, though the Petersen Parties have
admitted facts to the contrary. (See RFA ¶¶ 6-9.)

26 ¹⁰ E.g., the Petersen Parties argue that the statute
27 of limitations on a breach of oral contract claim has
28 passed. (Petersen Parties Opp'n at 15.) Compass Bank is
not moving for summary judgment on any breach of contract
claims.

1 the Subject Loan has passed from HTFC to Guaranty Bank to
2 the FDIC to Compass Bank. Without a specific allegation
3 of Compass Bank's wrongdoing, Compass Bank is simply too
4 far removed from HTFC's ethically questionable actions to
5 bar Compass Bank from asserting its interest in the
6 Subject Loan. Further, regardless of the original
7 transaction's legitimacy, the consistently ignoble
8 conduct of the Petersen Parties since that transaction
9 overwhelmingly supports a finding that if any party is
10 barred by doctrines of equity, it is the Petersens.

11
12 Similarly, Strunzo's waiver defense also fails, as
13 waiver is a doctrine far more aptly applied to the
14 Petersens than Compass Bank. Strunzo claims that Compass
15 Bank waived the right to enforce the Subject Loan "by
16 issuing an IRS Form 10[9]9-C stating the debt had been
17 canceled." (Strunzo Opp'n at 16.) Putting aside the
18 myriad ways that the Petersen Parties waived their right
19 to assert possession of the Subject Loan, including by
20 accepting the 1099C form from Guaranty Bank without
21 dispute, the 1099C form was mistakenly issued only
22 because the Petersens transferred interest in the
23 Property to Carolina Petersen's mother in a scheme to
24 misuse the bankruptcy laws and block the foreclosure
25 sale. (See RFA ¶ 19.) More fundamentally, though, the
26 1099C form stated an amount less than the total amount
27 the Petersens owed on the Subject Loan, which by itself
28

1 would defeat a claim that Compass Bank waived its right
2 to enforce the Subject Loan.

3
4 Therefore, the Court finds the affirmative defenses
5 submitted by Defendants as to Compass Bank's Motion for
6 Summary Judgment unavailing.

7
8 **B. Defendant Strunzo's Motion for Summary Judgment¹¹**

9 As the Court has found Plaintiff Compass Bank
10 entitled to summary judgment on the four claims against
11 Strunzo in the FAC, the Court must deny Strunzo's motion
12 for summary judgment as moot. Specifically, as
13 reiterated above, Strunzo can show no triable issues of
14 fact because the Reconveyance is void and, even were it
15 not void, Strunzo was on notice as to the unauthorized
16 Reconveyance, thus defeating Strunzo's claim that it is a
17 bona fide encumbrancer.

18
19
20
21
22 ¹¹ The uncontroverted facts set forth above as to
23 Plaintiff Compass Bank's Motion determine the outcome of
24 the remaining three summary judgment motions before the
25 Court and are derived from the same evidence, except to
26 the extent that the Requests for Admissions propounded to
27 the Petersen Parties and deemed admitted under Rule
28 36(a)(3) are not binding as to facts involving Defendant
Strunzo. Accord Riberglass, Inc. v. Techni-Glass Indus.,
Inc., 811 F.2d 565, 566 (11th Cir. 1987). The Court
does, however, rely on the Petersen Parties' admissions
regarding events to which Strunzo was not a party or
which preceded Strunzo's involvement in this matter.

1 **C. Defendants Christopher Petersen, Carolina Petersen,**
2 **and CP's Motion for Summary Judgment in Case Number**
3 **11-00871; Defendant Compass Bank's Motion for Summary**
4 **Judgment in Case Number 11-01201**

5 Based on the Court's finding that Plaintiff Compass
6 Bank is entitled to summary judgment on its FAC's first
7 six claims, the Court must deny the Petersen Parties'
8 Motion for Summary Judgment in case number 11-00871. On
9 the same grounds, the Court must grant summary judgment
10 to Defendants Compass Bank and Roundpoint in case number
11 11-01201 as to Plaintiffs Petersens' claim for
12 declaratory judgment. (SAC ¶ 27-31.)

13 In case number 11-01201, the Petersens also make
14 equitable claims for accounting, unjust enrichment, and
15 equitable estoppel, all of which are based on Compass
16 Bank's mistaken issuance of the 1099C form in Guaranty
17 Bank's name. (SAC ¶¶ 32-33 (accounting); 34-35 (unjust
18 enrichment); 36-40 (equitable estoppel).)

19
20 In addition to the uncontroverted facts already
21 discussed, the Court finds it uncontroverted that the
22 Petersens did not suffer any adverse tax consequences as
23 a result of the issuance of the 1099C form. (RFA ¶ 18.)

24
25 Defendant Compass Bank can prevail on its Motion for
26 Summary Judgment by showing that, "under the governing
27 law, there can be but one reasonable conclusion as to the
28

1 verdict." Anderson, 477 U.S. at 250. Compass Bank has
2 met this burden here.

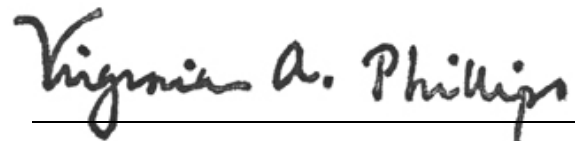
3
4 Under California law and longstanding principles of
5 equity, "No one can take advantage of his own wrong."
6 Cal. Civ. Code § 3517. A further maxim of equity is that
7 a plaintiff "who engaged in his own reprehensible conduct
8 in the course of the transaction at issue must be denied
9 equitable relief because of unclean hands." McKennon v.
10 Nashville Banner Pub. Co., 513 U.S. 352, 360 (1995). The
11 uncontroverted facts in this and the related case
12 demonstrate the Petersens' wanton, egregious, and
13 intentionally fraudulent misconduct, some of which
14 appears designed to provide the legal cover they now
15 seek. Based on the above uncontroverted facts and
16 equitable principles, the Court finds the Petersens'
17 reprehensible conduct over the course of several years
18 regarding the Subject Loan now bars them from seeking
19 equitable relief as to the Subject Loan, asserting rights
20 as to the Subject Loan, and challenging Compass Bank's
21 beneficial interest in and right to enforce the Subject
22 Loan.

23
24 Thus, the Court grants summary judgment to Defendants
25 Compass Bank and Roundpoint in case number 11-01201 and
26 dismisses all claims set forth in Plaintiffs' Second
27 Amended Complaint.

1 IV. CONCLUSION

2 For the foregoing reasons, the Court (1) GRANTS
3 Plaintiff Compass Bank's Motion for Partial Summary
4 Judgment on its first six claims in the FAC in case
5 number 11-00871; and (2) GRANTS Defendants Compass Bank
6 and Roundpoint's Motion for Summary Judgment on all of
7 Plaintiffs' claims in case number 11-01201. The Court
8 DENIES Strunzo's Motion for Summary Judgment and the
9 Petersen Parties' Motion for Summary Judgment in case
10 number 11-00871.

11
12
13
14
15 Dated: August 10, 2012



VIRGINIA A. PHILLIPS
United States District Judge